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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

13 CR 0268-2 (JMF)

5 VADIM TRINCHER,

6 Defendant.

7 -----x

8 New York, N.Y.

9 April 30, 2014

11:30 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

JOSHUA NAFTALIS

18 Assistant United States Attorney

19 MARTIN WEINBERG

Attorney for Defendant

20 ALSO PRESENT: ANDREW TARUTZ, Russian Interpreter

21 NELLY ALISHAEV, Russian Interpreter

22 ROBERT HANRATTY, FBI Agent

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(Case called)

MR. NAFTALIS: Josh Naftalis for the government. With me at counsel table is Robert Hanratty for the F.B.I.

MR. WEINBERG: Good morning, your Honor. Martin Weinberg on behalf of Vadim Trincher, who sits to my left.

THE COURT: Good morning to both of you.

We are joined by not one but two Russian interpreters, both of whom have oaths that are on file with the clerk's office.

I want to confirm, Mr. Trincher, that you are able to understand the interpreter and there's no trouble with the equipment.

THE DEFENDANT: Yes.

THE COURT: If at any point during this proceeding you have trouble understanding, and I know you speak some English, but I see that you are availing yourself of the opportunity to use the services of the interpreter, just let me know and we will take care of it.

THE DEFENDANT: It would be better to listen in Russian.

THE COURT: That's fine. I want you to let me know if there's any trouble with your understanding --

THE DEFENDANT: With the terminology.

THE COURT: Not a problem, but do me one favor, which is don't speak until I finish speaking because the court

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1 reporter here has to --

2 THE DEFENDANT: Sorry.

3 THE COURT: You did it again. Wait until I'm done so  
4 that the court reporter can record everything that I say and  
5 everything that you say and everything that happens here today.

6 Again, let me know if you have any trouble  
7 understanding either in English or with the assistance of the  
8 Russian interpreter, okay?

9 THE DEFENDANT: Yes.

10 THE COURT: Very good.

11 We are here today for purposes of sentencing. In  
12 preparation for today's proceeding, I have reviewed the  
13 presentence report dated April 22, 2014. I have also received  
14 and reviewed the following additional submissions: The  
15 defendant's submissions filed April 15, 2014, as well as the  
16 attachments to that submission, which include letters addressed  
17 to me from the defendant's wife, sister-in-law, the mother of  
18 his third child, other relatives and friends; the submission  
19 filed initially on April 28 and then refiled after a filing  
20 error on April 29; and the submission of the codefendant  
21 Anatoly Golubchik filed April 25, 2014, which was incorporated  
22 by reference in Mr. Trinchler's letter of April 28. I have also  
23 received and reviewed the government's submission filed on  
24 April 23, 2013.

25 Are there any additional submissions that I should

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1 have received?

2 MR. NAFTALIS: Not from the government.

3 MR. WEINBERG: Not from the defendant.

4 THE COURT: Very well.

5 Mr. Weinberg, have you read the presentence report?

6 MR. WEINBERG: I have read the presentence report, as  
7 has Mr. Trinchler.

8 THE COURT: Have you discussed it with Mr. Trinchler?

9 MR. WEINBERG: We have discussed the presentence  
10 report, your Honor.

11 THE COURT: Putting aside the calculation of the  
12 sentencing guidelines for a moment, are there any objections to  
13 the report with respect to its factual accuracy?

14 MR. WEINBERG: There is just one objection that I  
15 discussed with Mr. Naftalis and with Mr. Fischman before him.  
16 The objection is to the last sentence in paragraph 34 where the  
17 probation officer mistakenly represents the government's  
18 position on the amount of laundered funds to be 150 million,  
19 when, in fact, the government's position, as your Honor knows,  
20 it's 100. The government has agreed with my objection and we  
21 ask that the probation report be amended.

22 THE COURT: I actually was wondering about that myself  
23 as that was the first time I had seen reference to 150 million,  
24 which also is repeated in the probation department's  
25 recommendation portion of the presentence report.

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1           Mr. Naftalis, is there any objection to making that  
2 change?

3           MR. NAFTALIS: No, your Honor. That's correct.

4           THE COURT: I will direct that the last sentence of  
5 paragraph 34 and the recommendation be changed from 150 million  
6 to \$100 million.

7           Mr. Trinchler, have you reviewed or read the  
8 presentence report?

9           THE DEFENDANT: Yes.

10          THE COURT: Did you do so in English or was it  
11 translated for you into Russian?

12          THE DEFENDANT: English.

13          THE COURT: Were you able to understand it in English?

14          THE DEFENDANT: Yes.

15          THE COURT: Did you discuss it with Mr. Weinberg?

16          THE DEFENDANT: Yes.

17          THE COURT: Did you have enough time to go over it  
18 with Mr. Weinberg --

19          THE DEFENDANT: Yes, I did so.

20          THE COURT: You have to wait for me to finish,  
21 remember.

22          Did you have enough time to go over with him any  
23 mistakes in the report or anything that you wish to bring to my  
24 attention today?

25          THE DEFENDANT: No.

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1 THE COURT: Did you have enough time to discuss those  
2 things with him?

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Naftalis, have you reviewed the  
5 presentence report?

6 MR. NAFTALIS: Yes, your Honor.

7 THE COURT: Putting aside the sentencing guidelines  
8 for a moment, again, are there any objections, beyond the  
9 correction we have already made, to the factual accuracy of the  
10 report?

11 MR. NAFTALIS: No, your Honor.

12 THE COURT: Hearing no objections, other than the one  
13 that was made and the change I have already directed, I will  
14 otherwise adopt the factual recitations set forth in the  
15 presentence report which will be made a part of the record in  
16 this matter and placed under seal.

17 If an appeal is taken, counsel on appeal may have  
18 access to the sealed report without further application to the  
19 Court.

20 As counsel are aware, I am no longer required to  
21 follow the United States Sentencing Guidelines, but I am  
22 required to consider the applicable guidelines range in  
23 imposing sentence and must therefore accurately calculate the  
24 sentencing guidelines range.

25 In this case, there was a plea agreement in which the

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1 parties stipulated to a particular calculation of the  
2 sentencing guidelines. I take it that the sentencing  
3 guidelines range calculated by the probation department is the  
4 same as the range to which the parties agreed in that  
5 agreement.

6 Is that correct, Mr. Weinberg?

7 MR. WEINBERG: Yes, it is, your Honor.

8 THE COURT: Mr. Naftalis.

9 MR. NAFTALIS: Yes, your Honor.

10 THE COURT: That agreement notwithstanding, I directed  
11 the parties, in an order on Monday, to be prepared to address  
12 the question of whether an aggravating role enhancement was  
13 warranted pursuant to Section 3B1.1 of the guidelines.

14 As Mr. Weinberg certainly knows, this was an issue  
15 that was discussed at some length yesterday at the sentencing  
16 of Mr. Golubchik.

17 As I indicated yesterday, I was frankly a little  
18 puzzled by the absence of the enhancement in the plea agreement  
19 and in the probation report. Again, as with Mr. Golubchik, it  
20 would appear to me to apply on its face; that is to say, there  
21 does not seem to be any real dispute that Mr. Trinchler was a  
22 leader or organizer in this case, and that is stated expressly  
23 in paragraph 34 of the presentence report. It does not seem  
24 there could be any real dispute that there are at least five  
25 participants in that criminal activity or that it was otherwise

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1 extensive within the meaning of the guidelines' provision.

2 Mr. Naftalis, I assume you take the same position you  
3 took yesterday, which is that you're not seeking the  
4 enhancement, but you do not deny that it could be applied.

5 MR. NAFTALIS: Yes, your Honor.

6 THE COURT: Mr. Weinberg, do you wish to be heard on  
7 this?

8 MR. WEINBERG: Very briefly. I don't intend to reecho  
9 yesterday's arguments. I would, however, want to adopt the  
10 argument regarding the government's breach of the spirit of the  
11 agreement.

12 I would want to ask the Court to consider a slight  
13 derivative of the role argument and I'll do it very briefly,  
14 which is that unlike Mr. Golubchik, Mr. Trinchler had a  
15 leadership role, or like Mr. Golubchik, Mr. Trinchler had a  
16 leadership role in the gambling portion of the R.I.C.O.  
17 enterprise. He deferred to Mr. Golubchik, who was not a  
18 supervisor or organizer, although he was a beneficiary of the  
19 monies that came from Russia, the Ukraine, to Cyprus and,  
20 thereafter, to the United States, that part of the money  
21 laundering.

22 I'm not contending he's not liable for that predicate.  
23 He pled to that predicate. He's guilty of it. He profited  
24 from it.

25 I'm not making a distinction regarding their receipt



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1 of revenues. But in terms of supervision, in terms of active  
2 involvement in the money laundering aspect, the indictment is,  
3 as well as the government's position at the Golubchik bail  
4 hearing, demonstrates that there's some separation between the  
5 two. The role issue comes down to role as required to be  
6 assessed by the R.I.C.O. enterprise, not by its predicates.

7 Whether or not a leadership role in the bookmaking  
8 predicate would constitute a leadership role in R.I.C.O. is a  
9 decision for the Court; secondly, I would want to preserve, and  
10 although I know your Honor rejected it yesterday, the  
11 extraterritoriality comes into play only here.

12 We have a hybrid enterprise. It, obviously, has a  
13 United States component. Mr. Trinchler pled to it. He's not in  
14 any way challenging that plea. He's guilty. *Morrison* doesn't  
15 apply to the factual basis that there was a United States nexus  
16 to the enterprise.

17 But as to his supervision, his management, his  
18 organization, it was not of Americans. It was of Ukrainians.  
19 Ukrainian bookmakers are clearly involved with the leadership  
20 role, and I would not challenge the factual predicate for it.

21 The circuit has said foreign crimes are not relevant  
22 conduct. *Vilar* says a purely foreign offense cannot raise the  
23 value. The Court has not dealt with leadership of foreign  
24 parties in a hybrid enterprise for role.

25 The only argument I'd make is that the role adjustment

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1 requires that your Honor find that they were criminal  
2 participants. Purely foreign conduct is not a criminal  
3 participation.

4 It's up to your Honor to decide in this overarching  
5 R.I.C.O. where there's an American nexus whether a Ukrainian  
6 bookmaker who never came to the America, who never took a  
7 United States' bet, but who he clearly supervised - I don't  
8 deny that part, and I don't deny the extensiveness of the five  
9 or more parties aspect, but I just want to preserve the issue  
10 because I think this whole application of *Morrison* in  
11 sentencing through *Vilar* and other cases is in the less  
12 certain/unknown territory, and that would be my argument.

13 He's had leadership and bookmaking. Bookmaking is  
14 part of the R.I.C.O. Whether he's a leader of the R.I.C.O. is  
15 your Honor's determination based on that argument.

16 THE COURT: As you know, yesterday Mr. Naftalis argued  
17 that there are at least five participants here domestically and  
18 identified, among others, some codefendants in this case.

19 Do you dispute that they would qualify as participants  
20 for purposes of the enhancement?

21 MR. WEINBERG: No, but I would quarrel with the  
22 proposition that he had a supervisory, management role of  
23 Mr. Greenberg, Mr. Sall, and any of the people who were  
24 involved in the money laundering side of the case.

25 In fact, the indictment, when it describes

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1 Mr. Golubchik versus Mr. Trinchler, it says that Mr. Trinchler  
2 was a leader of the bookmaking; and it then says Mr. Golubchik  
3 was a leader of the bookmaking. And it adds as to  
4 Mr. Golubchik, and this is in paragraph nine of the indictment,  
5 that Mr. Golubchik worked with Trinchler to oversee the sports  
6 gambling, directed members of the associates in the  
7 organization in laundering tens of millions of dollars, a  
8 representation that properly was not made as to Mr. Trinchler.

9 During the bail hearing before your Honor, the  
10 government, Mr. Naftalis, represented correctly that Golubchik,  
11 quote, on page 17, "actually has more access to money than  
12 Mr. Trinchler. Mr. Golubchik was more of a money launderer."

13 I represent, through the reading of the extensive line  
14 sheets and summaries of the Russian conversations, he deferred  
15 to Mr. Golubchik when it came to money issues, investment  
16 issues, banking issues, laundering issues.

17 He's guilty of the R.I.C.O. He's guilty of  
18 supervising the bookmakers in the Ukraine. There's certainly  
19 five or more people, but he didn't supervise Greenberg or Sall  
20 or any of the people who were involved in the investment of the  
21 money end.

22 THE COURT: Let me say at the outset, to the extent  
23 that you incorporated by reference the arguments made yesterday  
24 about breach, I incorporate by reference my ruling on those. I  
25 think they are without merit and, therefore, I'm not persuaded

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1 on that score.

2 Mr. Naftalis, do you want to be heard or briefly  
3 respond to Mr. Weinberg with respect to, in particular, the  
4 distinctions, if any, to be drawn between Mr. Trinchler and  
5 Mr. Golubchik and whether he would qualify as a leader of the  
6 enterprise or at large?

7 MR. NAFTALIS: Yes. We incorporate what we said  
8 yesterday, including that we are not seeking the leadership  
9 enhancement.

10 What I hear is in contention with what Mr. Lichtman  
11 said yesterday. Mr. Lichtman said everything is abroad and I'm  
12 the money launderer; and Mr. Weinberg is saying I'm the  
13 gambling guy and everything is abroad. So, it seems everything  
14 is abroad. In any event, they waived this.

15 I'm sitting here thinking I should be arguing someone  
16 breached because all of these issues that were waived are now  
17 coming up again. We're not taking that position, but I'm  
18 putting that aside.

19 THE COURT: I don't think they waived the issue of  
20 whether the enhancement applies. That's an issue I have  
21 raised, and Mr. Weinberg is making arguments that I think are  
22 properly made with respect to whether that enhancement should  
23 be applied.

24 My question to you is on the factual question.

25 MR. NAFTALIS: On the factual question.

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1 THE COURT: Yes, on the factual question of  
2 Mr. Trinchler's leadership role, if any, or managerial role, if  
3 any, with respect to the different components of the enterprise  
4 here and where the participants in that conduct were located.

5 MR. NAFTALIS: I think it is fair to say that to the  
6 extent one of them had more of a money laundering role, it was  
7 Mr. Golubchik. Mr. Trinchler, though, was setting all the lines  
8 and involved in the money laundering. They may have had  
9 different strengths, but I don't think that means one of them  
10 is less of a leader. There were certainly five domestic  
11 participants.

12 I'm honestly not sure whether you can strip out a  
13 predicate and argue that you're a leader with respect to one of  
14 the predicates. I think you're the leader with respect to  
15 R.I.C.O. and we should probably lump them. I'm shooting from  
16 the hip honestly, but it doesn't make sense to me that you can  
17 make *Morrison* arguments with respect to predicates when they  
18 have pled to domestic conduct anyway.

19 Putting that aside, I do accept the proposition that  
20 Mr. Golubchik was more of the money launderer than  
21 Mr. Trinchler, but they both were doing the exact same thing.  
22 Maybe one of them set the lines more, being Mr. Trinchler,  
23 but he's doing all of that here. To the extent that your Honor  
24 recognized yesterday there's a lot of money laundering abroad,  
25 this is why I think this argument falls apart, because they're

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1 arguing against each other.

2 THE COURT: Are there five or more participants in the  
3 gambling piece of it in the United States, as well? Yesterday  
4 you mentioned Mr. Sall and Mr. Druzhinsky and the like. At  
5 least I think both of them, if I recall correctly, are more on  
6 the money laundering side of it.

7 Would you identify five or more on the gambling side  
8 of it to the extent that's even an intelligible distinction to  
9 draw?

10 MR. NAFTALIS: I don't think you can really draw the  
11 distinction. It's nice to argue it academically that they're  
12 separate, but obviously they overlap, which is why we went into  
13 this court, because if you're laundering your own proceeds,  
14 we're chasing our tail. There isn't sort of the money launders  
15 per se. The money launderers are supporting the gambling  
16 business, which is why we're in this guidelines problem.

17 There are certainly domestic participants here,  
18 including Sall Greenberg, Mr. Trinchler, Mr. Trinchler's son,  
19 Illya, Mr. Katchaloff, Mr. Druzhinsky, Mr. Shteyngrob.  
20 Mr. Druzhinsky's organization overlaps with this enterprise.  
21 The fact they aren't in the R.I.C.O. enterprise doesn't mean  
22 they wouldn't be counted for purposes of this five-person  
23 counting. I do think it's a distinction without a difference,  
24 but we easily meet it on both ends.

25 THE COURT: I do find that the leadership enhancement

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1 applies under 3B1.1(a) and incorporate by reference my ruling  
2 on that score yesterday. The bottom line is that I think it's  
3 undisputed that Mr. Trinchler was indeed a leader or organizer  
4 of criminal activity, at least as to part of the enterprise's  
5 activity. I think, too, it is ultimately impossible to  
6 disentangle the two in the sense that the money laundering was  
7 laundering the gambling proceeds and the gambling was furthered  
8 by the money laundering and vice versa. In that regard, I  
9 don't think there's a meaningful distinction to be drawn for  
10 purposes of whether somebody qualifies as a leader or manager.  
11 The law is you can be a leader or a manager of a portion of an  
12 enterprise in any event.

13 I also find without merit, for the reasons that I  
14 stated yesterday, any reliance or argument based on *Morrison* or  
15 *Vilar* here. To begin with, as a matter of law, I find it hard  
16 to imagine that the enhancement would not apply to someone who  
17 conducted their criminal activity from the United States and  
18 supervised people outside the United States in the sense that  
19 those people would be participants in criminal activity, the  
20 criminal activity to which someone pled. And the fact that  
21 they are physically located outside of the United States does  
22 not put them beyond the scope of this particular provision. It  
23 was cited as an example yesterday a drug conspiracy that occurs  
24 outside of the United States altogether with respect to drugs  
25 being sent into the United States.

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1           Beyond that, I think the record here would support a  
2 finding that there were five or more participants, regardless;  
3 and regardless, that the criminal activity was quote/unquote  
4 otherwise extensive given the massive scope, scale and nature  
5 of the criminal activity at issue here.

6           The bottom line is, it's not a close call and the  
7 enhancement clearly does apply; and to the extent that  
8 Mr. Weinberg has arguments to the contrary, perhaps you can  
9 make those to the circuit depending on what my sentence  
10 ultimately is.

11           In light of that, and the parties' agreement as to the  
12 rest of the guidelines calculation and the absence of any  
13 objection as to the rest of the calculation, as well as my own  
14 independent evaluation of the guidelines, I find, using the  
15 November 2013 edition of the sentencing guidelines that the  
16 total offense level is 20, the Criminal History Category is I,  
17 the guidelines range is 33- to 41 months' imprisonment, and the  
18 fine range is 7500- to \$75,000.

19           Let's turn to the issue of departures. In the plea  
20 agreement, the parties agreed not to seek a departure from the  
21 guidelines range, either an upward or a downward departure.

22           Is that correct, Mr. Naftalis?

23           MR. NAFTALIS: Yes.

24           THE COURT: Mr. Weinberg.

25           MR. WEINBERG: Yes, your Honor.



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1           THE COURT: That agreement notwithstanding, I issued  
2           an order yesterday indicating that counsel should be prepared  
3           to address the question of whether the government's argument  
4           for an upward variance on the grounds that the guidelines do  
5           not adequately take into consideration the offense conduct  
6           would be a basis for an upward departure pursuant to Section  
7           5K2.0 of the guidelines; that is on the ground that this case  
8           presents circumstances of a kind or to a degree not adequately  
9           taken into consideration by the guidelines.

10           As I indicated yesterday at the sentencing of  
11           Mr. Golubchik, the issue may ultimately be academic, but under  
12           *Crosby* and its progeny, the question of a departure is supposed  
13           to be treated as analytically and legally distinct from the  
14           question of a variance and is supposed to be addressed first,  
15           so that is what prompted me to raise the issue.

16           Let me ask at the outset, Mr. Weinberg. Obviously, as  
17           I indicated yesterday, the parties are entitled to notice  
18           before the Court contemplates or imposes any departure and that  
19           is reasonable notice, I think particularly because this  
20           sentencing is taking place a day later and you were present  
21           yesterday and the issue is fully joined in the parties'  
22           sentencing submissions, even if it was addressed and  
23           articulated there as a variance issue rather than a departure  
24           issue that you have gotten reasonable notice, but I want to  
25           confirm that you have read it.

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1 MR. WEINBERG: I have read it.

2 THE COURT: Very good.

3 What I propose to do is what I did yesterday, which is  
4 to defer the question of the departure on that ground until  
5 after I hear from counsel more generally on the theory that  
6 your sentencing remarks may address the issue more broadly  
7 whether it is treated or viewed as an issue of a departure or  
8 an issue of a variance. I'm going to table that issue for a  
9 moment.

10 Putting that one issue aside, I have nevertheless  
11 reviewed whether there would be another basis for a departure  
12 within the guidelines' framework; that is, as distinct from  
13 what has come to be known as a variance. And I do not think  
14 that there are grounds that would support a departure in either  
15 direction.

16 Having settled all that, or at least most of that,  
17 Mr. Naftalis, do you wish to be heard with respect to  
18 sentencing?

19 Let me ask both counsel, obviously, both of you were  
20 present yesterday for the lengthy sentencing proceedings with  
21 respect to Mr. Golubchik. Obviously, Mr. Weinberg, you're  
22 entitled to make any arguments you want, even if they repeat  
23 arguments that I heard and ruled upon yesterday. But what  
24 might be most helpful to me is, to the extent that you think  
25 that Mr. Trinchler is either similarly situated or different

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1 from Mr. Golubchik, to certainly address that because,  
2 obviously, that is going to be a factor in my decision of what  
3 sentence to impose on Mr. Trinchler.

4 With that introduction, Mr. Naftalis, is there  
5 anything you wish to say?

6 MR. NAFTALIS: We don't have anything else to add,  
7 other than to point out, as we did, that to the extent there is  
8 a distinction, I would say as a threshold matter, I don't think  
9 there's a distinction between Mr. Golubchik and Mr. Trinchler  
10 with respect to what they did. If you're going to call one  
11 more of a money launderer versus a gambler, I think they're  
12 basically at the same level.

13 To the extent there's a distinction, it's that  
14 Mr. Trinchler also brought his sons into the gambling business.  
15 I don't think it necessarily means the sentence should be  
16 different honestly, but we wanted to point out that both Illya  
17 and Eugene Trinchler have been convicted for gambling-related  
18 offenses. It certainly speaks of the defendant's involvement  
19 in this business that he managed to pull his sons into it and,  
20 in our view, he was grooming them to take his role. The  
21 gambling business that Illya Trinchler was running, it was  
22 basically a baby version of what Mr. Vadim Trinchler was  
23 running. In the years to come, we expected that's what would  
24 have happened.

25 THE COURT: Thank you.

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Mr. Weinberg, do you wish to be heard?

MR. WEINBERG: I do. May I speak from the podium?

THE COURT: Sure.

MR. WEINBERG: Thank you, sir.

I don't intend to reecho the arguments of yesterday. I intend instead, if your Honor please, to make either new ones or to augment an argument that I don't know was sufficiently presented.

I also want to do it in the context where I think the government and I agree that Mr. Golubchik was the engineer, the quarterback, the force in terms of money laundering, and, therefore, to the extent your Honor separates out bookmaking and money laundering, I think there is a principal distinction between the application of an upward departure/variance. If I use one term or another, I mean to present an argument that addresses both of those separate but related concepts and whether or not the guideline of 33 to 41 months ought to move upwards towards the 60 months.

Your Honor can consider the fact that Mr. Trinchler deferred to Mr. Golubchik on matters of business, investments, banking, moving money, investing money, selecting businesses, supervising businesses. Mr. Trinchler is a man, and this is not offered as an excuse in any way, who grew up in Kiev. He was denied an adequate education.

At age 28, he was able to emigrate to the United

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1 States, bring his family with him, but didn't have the skills  
2 to be an American businessman. He had the brain but didn't  
3 have the education, didn't have the skills. And what he did  
4 was he stayed in touch with his early friends from Kiev, that  
5 he made a living for his family that had lost their business  
6 because they were trying to emigrate and they were denied the  
7 right to work in the old Soviet Union.

8 He made a living through the ten years after school  
9 through being a very successful card and backgammon player. He  
10 came to the United States. During those ten years, he met many  
11 of the people that became, when Gorbachev liberated the Ukraine  
12 from the Soviet Union, the people that became an oligarchs, the  
13 millionaires, the billionaires, the people who essentially made  
14 mega wealth through the ways that people in Russia and the  
15 Ukraine made that kind of wealth. They were his bettors. They  
16 were his clients.

17 He never had a United States bettor. He never made a  
18 dollar himself personally. He never received bets from the  
19 United States customers. There's a couple of satellite bettors  
20 that bet with Mr. Golubchik that he profited from indirectly  
21 because they had a partnership in business.

22 But his clientele, and the reason that this  
23 organization made so much money, were the owners of soccer  
24 teams in Kiev. They were the owners of apartment complexes in  
25 Moscow. They were these enormously wealthy people that were

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1 placing recreational bets in large amounts which was the  
2 corollary of the bookmaker who won more than he lost making a  
3 lot of money. But once the money was made, the money was  
4 really owned and controlled and directed and engineered by  
5 Mr. Golubchik who had a far greater interest in facility and  
6 the operations of businesses and investments.

7 With that said, I think there are three or four  
8 principal bases where your Honor can either reconsider the  
9 application or consider whether or not an upward departure or  
10 an upward variation is needed for Mr. Trinchler. It's an  
11 individualized sentence, and I think there is a distinction on  
12 the money laundering front that can justify a sentence  
13 different than that imposed yesterday.

14 First, let me, if I can, spend a few minutes setting  
15 out the objection that I would have made yesterday on an even  
16 playing field on the 5K2/3553. The first would be more of a  
17 legal objection that this is not a factor that the commission  
18 did not consider. And that doesn't eliminate it under 3553,  
19 but I suggest it raises the burden for an upward departure to  
20 find exceptional circumstances, rather than just circumstances  
21 not considered by the commission.

22 What we have here is 27 straight years since the  
23 formation of the commission, which was formulated to create  
24 national uniformity, of a base offense level 12 with no  
25 specific enhancements to the underlying specified unlawful

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1 activity, that being bookmaking.

2 The Department of Justice knows how to ask for changes  
3 in the sentencing commission. They're a very forceful advocate  
4 for changes. The sentencing commission has amended the  
5 guidelines over 700 times. There has never been, to my  
6 knowledge, a demand or a request or a push from the Department  
7 of Justice to change the base offense level 12. I don't know  
8 of any other judge that has upwardly departed for bookmaking  
9 alone.

10 Again, this is a R.I.C.O. case and a money laundering  
11 case, so there are certain differences, but it's not as if  
12 there's a ground swell of judicial challenge to the base  
13 offense level 12 like there is, for instance, with child  
14 pornography guidelines or for drug guidelines or even for fraud  
15 guidelines for the lesser involved people where judges have  
16 regularly departed downward and registered their  
17 dissatisfaction with the architecture of the guidelines.

18 Money laundering is parallel to the bookmaking  
19 guideline where you have in 2001 a very deliberate decision  
20 made by the sentencing commission where there are judges on the  
21 sentencing commission, the most recent judge is the chief judge  
22 of my local court, Judge Saris from the District of  
23 Massachusetts.

24 They do hear when there are problems. They listen to  
25 the Department of Justice. They listen to the defense bar.

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1 And yet since 2001, nobody has really challenged the idea that  
2 the direct money laundering guideline, which correlates to the  
3 underlying offense and increases the guideline for drug dealers  
4 and for major fraud people through the quantity of drugs,  
5 through the value, that there is no enhancement for bookmaking.  
6 That was a deliberate decision. Never challenged by the  
7 government, never challenged by the sentencing commission.

8 So what does that mean? Well, ignorance of the law is  
9 no defense. There ought to be some value in the fact that  
10 predictability and uniformity and knowledge of the law - even  
11 if it's constructive knowledge, because citizens clearly can't  
12 master the complexities of Title 18 of the sentencing  
13 guidelines - that a citizen would expect.

14 Forget the plea agreement. They would expect the  
15 guidelines are the guidelines and the courts do have the  
16 authority to go up or go down. It's not strictly *ex post*  
17 *facto*. We're dealing with whether the guidelines should be  
18 changed for a significant bookmaking operation that generates  
19 sufficient money, but there are some of those values of  
20 consistency and on predictability that do get destabilized when  
21 the government is seeking and the Court independently - I  
22 understand this is the Court's job - to independently judge  
23 under 3553 and 5K2 whether there is a factor the commission  
24 didn't consider.

25 I would first make the legal argument that the



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1 commission did consider bookmaking. Bookmaking makes money. I  
2 gave your Honor a footnote on page four of the original  
3 sentencing brief, I quoted from the article of "The New York  
4 Times" where they talked about what an incredible amount of  
5 money is bet each year.

6 THE COURT: I remember the article.

7 MR. WEINBERG: Billions and billions, into the  
8 hundreds of billions of dollars are lost by sports bettors in  
9 America. He didn't make one of those dollars or if he made  
10 one, he made very little. The government has consistently and  
11 properly represented in the affidavits they catered to Russian  
12 and Ukrainian bettors. Maybe there's a small percentage that  
13 Mr. Golubchik took from U.S. bettors. But the thrust of it was  
14 they didn't even enter into this mega-billion-dollar business,  
15 but other bookmakers have. This is where I challenge the  
16 government that there's no factual basis for the government's  
17 position that this is some exceptional, extraordinary  
18 bookmaking operation.

19 Yes, there's a lot of money. And as someone who comes  
20 from my background, it's a lot of money, whether it's one-third  
21 of 50 million or one-half of 50, whatever it is, it's a lot of  
22 money. But in bookmaking, it's not huge, out of heartland  
23 extraordinary.

24 Yesterday, you asked a hypothetical that wasn't  
25 answered. Clearly, there's two anomalies here: What do we do

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1 with Mr. Azen whose guidelines are higher than Mr. Trinchers'?  
2 What do we do about the bookmaker who wasn't indicted here who  
3 makes 2,000 bucks on a street corner and how do we compare  
4 that?

5 First, the commission decided that there is no value;  
6 but second, there are ways to address those two anomalies.  
7 Your Honor addressed it with Mr. Azen. Had it not been for his  
8 violence, I'm not the Judge, obviously, I can't testify to the  
9 assessment, but your Honor did say there is a pattern of  
10 violence, a reputation for violence with Mr. Azen. People went  
11 to him to collect. His guideline was 18, his sentence was 18,  
12 but it may well have been less with your Honor's deciding how  
13 do I temper, moderate what is an extreme third-party money  
14 launder in the guidelines?

15 Judges do that in fraud cases where people are  
16 involved in a large fraud, but they're at the very bottom and  
17 judges consistently individualize the sentence. There is a  
18 principled way to bridge the two people through a downward  
19 departure.

20 I would suggest for a \$2,000 bookmaker, first, he  
21 wouldn't be federally indicted. He would be state-indicted.  
22 He would not end up with a jail sentence. Bookmakers regularly  
23 get probation. The Pinnacle defendants got probation in  
24 Queens.

25 Bookmaking, whatever we think of it, whatever its

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1 effect, has not resulted in large jail sentences. And I would  
2 represent to your Honor that I did a quick survey, including  
3 asking Mr. Chesnoff, who knows bookmaking cases like New York  
4 lawyers know insider trading cases.

5 In the *Jay Cohen* case, the leading Second Circuit  
6 precedent, it's a much larger case. In that case, he received  
7 a 21-month sentence, I'll check my notes, but it was in the  
8 twenties. He went to trial and lost. His codefendant got a  
9 nonjail sentence from Judge Wood.

10 Mr. Gorean in Florida fell all over the wiretap  
11 applications, a major bookmaker, Northern District of New York.  
12 He was denied bail, he did a year in jail, major money  
13 laundering. He got money laundering plus four for the specific  
14 offense, down three. He got time served, one year.

15 The biggest bookmaker, a billion-dollar bookmaker  
16 named Kaplan who got arrested and convicted, he got 51 months,  
17 and that was Bet On Sports, B.O.S., a billion-dollar bookmaker.

18 I would submit that these internet bookmaking  
19 companies, like the poker companies that Judge Kaplan  
20 addressed, make hundreds and hundreds of millions, that they  
21 take American bets, that they make money from American bettors,  
22 that they're within the heartland of why the federal government  
23 federally criminalized bookmaking, which is to protect United  
24 States citizens, not to protect some Ukrainian oligarch.

25 I would, therefore, make the two principal arguments

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1 that, one, the commission has considered the amount of money  
2 that a bookmaker makes. They have considered its longevity,  
3 its scope, its profits, its proceeds. It has concluded that  
4 that is not a factor. That is a factor the commission  
5 considered and not a factor that they want to use, unlike in  
6 other crimes; secondly, despite the fraction, whether it's a  
7 half or a third of the money, whether it's 50 or 100, sadly,  
8 perhaps, this is not an exceptionally large bookmaking  
9 operation.

10 To the extent it's sizeable, the atypicality, I would  
11 suggest, cuts against aggravation because it's not the New York  
12 bettor. It's not the small bettor. In Cohen they talked about  
13 1600 Americans bet through Jay Cohen's operation ten years ago  
14 out of 16,000 bettors in all.

15 He had 15. Most of them were his friends. All of  
16 them could afford to lose money.

17 I would recommend to the Court to consider as to  
18 Trinchier whose conduct, to the extent it's aggravated, it's as  
19 a bookmaker, not a money launderer, that your Honor reject the  
20 government's request for an upward departure.

21 I would also contend, your Honor, that as a  
22 proportionality matter, I don't want to, again, burden the  
23 Druzhinsky sentencing. The guideline sentence of 33 to 41  
24 months would be a multiple of ten or 11 or 12 or 13 more than  
25 the jail portion of Mr. Druzhinsky's sentence; that although

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1 his money laundering was four million, not X million, even when  
2 the commission deals with money, they don't double the sentence  
3 for each doubling of the money.

4 For instance, when you go from one million to 2.5  
5 million in the 2B1.1 table, it goes up two levels from 14. It  
6 doesn't go from 14 to 28. So, the commission understands the  
7 gravity of the sentence cannot simply be a multiple of the  
8 amount of money.

9 I would submit with Mr. Druzhinsky, he took American  
10 bets. He wanted some of Mr. Golubchik's clients according to  
11 the evidence, that he was a bookmaker and money launderer, and  
12 that Mr. Trinchler's conduct is not ten or 12 times graver or  
13 requiring a sentence of ten or 12 times, which would be the  
14 guideline, and certainly not 20 times as serious in terms of  
15 the rationales for sentencing, which is to deter. Yesterday's  
16 sentence would deter anyone. And sentences of short, discreet  
17 consistency, it's always been taught that that deters people  
18 who are deterrable.

19 Punishment, whether it's three years, Judge, anything  
20 over what he negotiated to is serious punishment. I would ask  
21 the Court on a proportionality ground -- I understand the Court  
22 wants to position defendants in a multiple-defendant case, it's  
23 perfectly appropriate to deal with disparity and  
24 proportionality, but to multiply his sentence 20 times is  
25 unwarranted disparity, and that would be the result if your

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1 Honor imposed the 60-month sentence on Mr. Trinchler.

2 I would also ask the Court to remember, as I have  
3 said, that his bettors were not U.S. bettors. I think he,  
4 therefore, falls outside of the heartland in a way that is  
5 inconsistent with magnifying his punishment more than someone  
6 who took bets from a United States bettor. It doesn't excuse  
7 it. Certainly, the money came into the U.S. and he used the  
8 phones. Had he used the phones in Moscow, this would be a  
9 licensing issue, not a R.I.C.O. issue. It doesn't excuse it.  
10 It doesn't explain it. He's guilty. He admits it.

11 I want to focus, if I can, because I don't know if the  
12 government is still pushing the Marik call. I hope they're  
13 not. I think I shared the total records that these are best  
14 friends kidding, and if the Court does not want me to address  
15 that, I won't.

16 THE COURT: Unless the government does want to press  
17 the point, then I'm persuaded by your arguments that that is  
18 probably more innocuous than the government suggested  
19 initially. So I don't think you need to spend any time on  
20 that.

21 MR. WEINBERG: I do, however, want to address, I don't  
22 know how to pronounce his name, so I'll say Tokhtakhounov. The  
23 probation report represents what it represents. At the time, I  
24 didn't object. I didn't think it was material, given my  
25 understanding that the government was going to recommend a

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1 guidelines sentence, but the facts are as follows:

2 The government wiretapped Mr. Trincher and  
3 Mr. Golubchik for five months. That was two years ago. There  
4 has not been any evidence presented to the Court in terms of  
5 any suggestion that the sentence should be effected or enhanced  
6 for violence. There's been no evidence that anyone was harmed.  
7 There's been no evidence that any identifiable bettor was  
8 threatened. There's certainly no evidence on these tapes that  
9 Mr. Trincher threatened anybody.

10 He's a businessman. The tapes are replete with him  
11 saying give it time, he'll pay, he'll pay slowly. He'll pay by  
12 the month. He never asked Tokhtakhounov, go get my money and  
13 threaten people, implicitly or explicitly. I can't speak for  
14 what happens in Moscow.

15 I can speak to, that after studying this case and many  
16 months of call sheets, there's no evidence that he threatened  
17 anybody or asked for anyone to threaten anyone or asked for  
18 anyone to go collect money through use of extortionate means,  
19 and the government didn't ask him to plead to an extortionate  
20 predicate. Thousands of wiretaps two years ago is not a  
21 trustworthy basis to enhance his sentence on violence.

22 Going to these two conversations with Mr. Golubchik,  
23 not with Mr. Trincher, but to the extent that it spills over, I  
24 can't ignore the effect. The first of the two, they were  
25 discussing a bettor named Tatarin. He is recommended to them

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1 by Mr. Tokhtakhounov as someone who made 50 million bucks and  
2 wanted to bet, and that he, Tokhtakhounov, would say I think  
3 it's a good bet to take. He left it up to Mr. Trinchler and  
4 Mr. Golubchik, and they ended up not taking him as a bettor.

5 Through the continuation of the wiretaps, it would  
6 reflect he was not betting with them in late May and June of  
7 2012. They said no, which I think is consistent with the fact  
8 that they didn't want a bettor who caused problems, who  
9 complained, who would be a problem. They didn't want to rely  
10 on any kind of improper collection.

11 Part of what the government reads in, and none of us  
12 were there in Moscow and we're not on the streets and we're  
13 here thousands of miles away, is that some of the conversations  
14 the government may think have a scent of violence are talking  
15 about reputational threats, not violent threats. These are  
16 billionaires, oligarchs who want to bet. It's their past time.  
17 It's even more ingrained in their culture than it is in  
18 America.

19 If they don't pay their bets, then they're shamed or,  
20 as Mr. Tokhtakhounov said in one of these two conversations,  
21 I'm going to put up a stink, which means they'll spread the  
22 word that you can't trust this person. And that's the second  
23 conversation about a man named Roma, who, in other tapes, it  
24 showed he was going out buying Moscow houses for 20 million  
25 each and he was going to London for a \$50 million business deal



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1 and he wasn't paying his gambling debts. There's discussion  
2 there, but again no evidence, that he was ever threatened and  
3 no evidence that he was ever harmed. In fact, in tape 2043,  
4 it's Roma threatening Vadim Trinchier for not taking his bet,  
5 which was discussed in a later conversation as well.

6 All of it is not to disregard the fact that the  
7 government has indicted Mr. Tokhtakhounov as an independent  
8 codefendant in Moscow, but when we're individualizing sentence,  
9 your Honor, this is not a violent man. He is not a man that  
10 resorted to violence. He's not a man who asked anyone else to  
11 resort to violence. And the best proof in this respect is the  
12 government's own tape where they elected not to take a bettor  
13 who, quote, was a complainer, according to the transcript.

14 I want to talk briefly about the suggestion that his  
15 sickness should be affected by his relationship to his sons,  
16 both of whom are in court, both of whom, whatever their  
17 transgressions, they were not part of his bookmaking.

18 Mr. Trinchier, on one hand, didn't accept the American  
19 multimillionaires that played poker with Illya Trinchier. And  
20 I'm not going to get ahead of his own sentencing arguments that  
21 will be presented to your Honor, but most of what Illya learned  
22 from his father, to the extent he learned gambling, it was to  
23 be a poker player.

24 This man is a world-class poker player. He's won  
25 tournaments at Foxwood's. He's won tournaments in Las Vegas.

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1 Check the internet and what you'll see right behind this case  
2 is references to the Trinchers as professional poker players.  
3 Yes, Illya Trincher learned poker skills. He also learned  
4 chess skills.

5 There's a letter from Daniel's mother or from  
6 Mrs. Trincher. They both wrote letters about Vadim Trincher,  
7 the father of his 12-year-old son, and how when he comes to the  
8 house, they successfully integrated the families because Vadim  
9 Trincher couldn't leave his house to continue to go three times  
10 a week to see his son's swim meets, attend his son's classes,  
11 which he did religiously according to the mother of Daniel, who  
12 is also present in court.

13 But Mrs. Trincher talks about the home and all of them  
14 coming together and the three chessboards at a table. The  
15 wiretaps show Illya asking his dad about a love relation and  
16 his dad saying follow your heart, make your own decision.

17 You have letter after letter from some of the people  
18 that are here. Marcus Gordon is in the first row. There are a  
19 lot of people that trusted Vadim Trincher with \$10 million,  
20 more than most or all of them had. He met their trust. He  
21 conformed to the conditions of bail.

22 They wrote letters to the Court. I know the Court has  
23 read them. I'm not going to burden the Court, but there are  
24 two sides to this man, neither of them are violent. Neither of  
25 them are of a sophisticated money launderer.

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1           One of them is that he grew up in the world of  
2 gambling and he never abandoned it, and he regrets that. He  
3 understands it's an American crime and understands he shamed  
4 himself with his family and he shamed himself with his mother,  
5 which hurts him to the core.

6           Another side of him is that he is a gentle mentor. He  
7 mentored other children. You have letter after letter that he  
8 didn't just throw money at charities. He put his time, wisdom,  
9 and guidance on the line. He's a good man.

10           I ask your Honor to please consider giving him a  
11 sentence at the guidelines as enhanced by the role.  
12 Thirty-three to 41 months is more than sufficient. Time in  
13 jail crawls according to people that have talked about it.  
14 It's a numbing experience. That sends a message. That's  
15 sufficient deterrence and punishment, and that's certainly the  
16 kind of sentence that will extinguish any risk that  
17 Mr. Trinchler will ever go back to the life he led.

18           Since I met him, he's been under house arrest. He  
19 wanted to learn English better. He wanted to go to school. He  
20 wants to learn computer skills. He wants to be a member of our  
21 society. He has the brains and the ethics to do it. He'll  
22 never be before the Court again. Please give him a guideline  
23 sentence, Judge.

24           Thank you.

25           THE COURT: One question to you, Mr. Weinberg, before

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1 you sit down.

2 I know the defendant invoked his Fifth Amendment  
3 privilege with respect to providing financial information to  
4 probation.

5 MR. WEINBERG: Yes.

6 THE COURT: Is there any dispute he would be capable  
7 of paying a fine in this case?

8 MR. WEINBERG: There is none, your Honor.

9 THE COURT: Thank you.

10 MR. WEINBERG: Thank you, sir.

11 MR. NAFTALIS: Can I reply briefly on this.

12 THE COURT: Yes. I actually would like you to reply  
13 briefly in particular to the argument that Mr. Weinberg made,  
14 which was not really made yesterday, which is that this case is  
15 not exceptional or out of the heartland in its scale or scope,  
16 that there are other bookmaking enterprises and the like that  
17 are similar or graver in size.

18 If you could address that in addition to whatever else  
19 you want to respond to, go ahead.

20 MR. NAFTALIS: Yes. I'll start with that question.  
21 To our knowledge, this is one of the biggest bookmaking  
22 operations in the world. To hear it here, it's as if we picked  
23 off something on the street corner. This is a R.I.C.O.  
24 enterprise, which I think is getting lost in the guidelines  
25 discussion, operated by two men affiliated with a man, one of

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1 the highest levels of organized crime in Russia, who ran a  
2 massive sports bar. I don't know of any other case that's this  
3 big.

4 We're now saying that \$100 million isn't a lot of  
5 money. I thought that was a lot of money.

6 THE COURT: Do you know anything about the cases that  
7 Mr. Weinberg cited, because I confess, I don't know.

8 MR. NAFTALIS: I know the *Pinnacle* case. I don't know  
9 the scale of it honestly, but those are not R.I.C.O. cases,  
10 which I think is what every defendant yesterday and today are  
11 running from. These men did not plead guilty to bookmaking.  
12 They pled guilty to being racketeers.

13 The problem we have is that the guidelines push you  
14 down to what we think of as just bookmaking, but that is not  
15 what your Honor is considering. Your Honor is considering  
16 whether two men who your Honor has found led a R.I.C.O.  
17 enterprise, what they should be sentenced to, not what two men  
18 who ran a book out of New York should be sentenced to. That is  
19 really the key question.

20 I would just reiterate that's the argument we were  
21 making in our memo, which was that the guidelines make you  
22 forget that it's R.I.C.O. because you keep coming back to the  
23 easiest and lowest offense.

24 We don't agree that there is a real difference between  
25 Mr. Trinchler or Mr. Golubchik. We're, obviously, up here

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1 standing up here saying did someone have a strength? Yes.  
2 Mr. Trinchler was just as involved in money laundering. He's on  
3 all of the signature cards for the bank accounts. He is  
4 receiving equal share, which is laundered through all of these  
5 Cyprus shell accounts, into their hedge funds, real estate.  
6 They're doing the exact same thing. Maybe one of them did a  
7 little more than the other, but again, this is a R.I.C.O. case.  
8 They are sharing in tens and tens of millions of dollars. The  
9 calls make clear they are equal business partners. He is not  
10 Mr. Golubchik's servant. They are equal in all respects.

11 To distinguish the cases, which I confess I don't know  
12 much about, there was no tie to organized crime.

13 Mr. Tokhtakhounov is a vor; there is no dispute. The fact  
14 where on one wiretap for a few months and the fact that we  
15 don't have someone being hurt, that's always held against the  
16 government. But that is what his job is; that people are so  
17 afraid to cross him, that they pay. That is called extortion:  
18 Threat of the use of force.

19 When Mr. Trinchler's home was raided by the F.B.I.,  
20 there were tons of cell phones. Who knows what was going on  
21 with the other cell phones. The argument that nothing ever  
22 happened, we're equally in the dark. We know the phone we were  
23 on and we know what Mr. Tokhtakhounov's role was, which was to  
24 get people to pay.

25 These oligarchs, they came to New York to bet. So,

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1 this overseas fiction that's being created, yes, a lot of it is  
2 overseas. When they came here from Kiev, they are betting in  
3 New York City. They traveled internationally back and forth.  
4 Mr. Trinchler traveled internationally back and forth. The  
5 whole reason why they're coming here and moving their money  
6 here is because the American banking system is safe. That's  
7 why they're laundering money through Cyprus to the United  
8 States; because they're all afraid of what happens if we keep  
9 our money in a bank in Kiev or a bank in Moscow.

10 They are exploiting the U.S. banking system to run an  
11 international R.I.C.O. enterprise. That's why the sentence  
12 should be so high and that's why it's exceptional. This isn't  
13 a guy booking 20-dollar bets on the corner. This is someone  
14 who was affiliated with, and has pled to, being a part of a  
15 R.I.C.O. enterprise.

16 The sentence for Mr. Druzhinsky, he did not plead to  
17 being in a R.I.C.O. enterprise and he was doing much less. He  
18 had international clients, too. They're on a different scale.  
19 And there was no allegation that Mr. Druzhinsky was affiliated  
20 with Mr. Tokhtakhounov.

21 The calls, to read them innocently, every defendant  
22 comes up here and says we read these things so aggressively.  
23 You read them and it's not just a hint. There's the implicit  
24 use of force that they are implying will be used. And we have  
25 the calls go send, I'm forgetting the names, effectively the

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1 collectors overseas who are inheriting the reputation of  
2 Mr. Tokhtakhounov.

3 Overall, they should get the same sentence, your  
4 Honor. Then we do believe that to the extent there is some  
5 sort of mitigating argument, which I don't believe has any  
6 merit, bringing your children and then recruiting them to rise  
7 up is an aggravating factor.

8 All of these men, I'm sure, have wonderful families.  
9 That's not in dispute. The question is whether Mr. Trinchler  
10 was teaching his children to take over a massive bookmaking  
11 operation. And they are picking up money for each other, they  
12 are coordinating, they are learning how to do international  
13 bookmaking and money laundering. So, the sentence should be  
14 the same. There is no difference at all.

15 To distinguish bookmaking from money laundering is a  
16 vague distinction, but it also ignores the fact this is a  
17 R.I.C.O. case and that's what I think the sentence comes down  
18 to.

19 MR. WEINBERG: May I respond for a moment.

20 THE COURT: You may briefly, and then I want to give  
21 the defendant an opportunity to be heard.

22 MR. WEINBERG: Very briefly.

23 One is, yes, it's a R.I.C.O. case, but his end that he  
24 managed was the bookmaking end, not the complexity of the money  
25 laundering. That distinguishes him from Mr. Golubchik. It



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1 makes him more like the *Pinnacle* billionaires that ran the  
2 largest internet company. They got probation in Queens. Yes,  
3 they were not federally charged with R.I.C.O. It distinguishes  
4 him from other R.I.C.O. people.

5 Yes, whatever Tokhtakhounov is, he never asked him to  
6 use his organized crime influence to collect money in Kiev or  
7 Moscow. He's not a man of violence. And the proof of it is  
8 the government's own conversations that show they didn't take  
9 bets from anyone they thought could be a problem.

10 Second, I would suggest a sentence more in line with  
11 the bookmaking sentences, even with a small enhancement or the  
12 enhancement for R.I.C.O., would be appropriate which gets  
13 you -- we started with R.I.C.O. It's already been included in  
14 the plus-four role. Thirty-three to 41 is not a bookmaker  
15 sentence; it's a R.I.C.O. sentence, but I would contend it  
16 should not have the enhancement for being a sophisticated money  
17 launderer because he was a beneficiary but not the man that ran  
18 the money laundering.

19 Second, I can't let the statements about his two sons  
20 go. The government gave you two examples. On one, his son got  
21 on planes in Vegas. He had poker money that he invested in a  
22 poker game. Somebody won. He got it back. He paid one of  
23 Illya's -- somebody said can you pay and Illya was in Los  
24 Angeles. He paid. His sons are not professional bookmakers.  
25 You'll hear about Illya and 99 percent of what he did crossed

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1 over in the line. He'll talk to you about it. Mr. Chesnoff  
2 represents him. I'm not going to burden the Court with Illya.  
3 He didn't groom people to take over his business. That's just  
4 not fair and not right.

5 In fact, Illya Trincher, 28 years old, has never been  
6 to Moscow, never been to Kiev. He didn't introduce him to his  
7 childhood friends. Illya Trincher never took a bet from the  
8 people in Kiev and he never took a bet from the people that  
9 Illya Trincher was playing poker with who asked Illya, hey,  
10 please get a Laker game bet on. And they bet large amounts of  
11 money because they're very wealthy people.

12 It's not fair to attribute his conduct to them; and I  
13 would suggest, your Honor, that it's not fair for the  
14 government to argue that he's somehow grooming them to take  
15 over his business. That's completely incompatible with the  
16 facts of this case.

17 THE COURT: Thank you.

18 Mr. Trincher, is there anything that you wish to say  
19 before I impose sentence?

20 THE DEFENDANT: Your Honor, I am reading because I'm a  
21 little bit nervous. I appreciate that you let me out on the  
22 bail and that you trust me, and I did not let you down.

23 I deeply sorry for my crime and will do the sentence  
24 you impose. I know the sentence may exceed my hopes. I know  
25 that Mr. Golubchik was sent to jail yesterday. And I ask you,

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1 sir, and I ask you that you trust me again and let me  
2 self-surrender so I can say a proper good-bye to my --

3 THE COURT: Take a minute Mr. Trincher, if you'd like.

4 THE DEFENDANT: Okay. Say good-bye to my little boy  
5 and Yevgeney and Illya when they are sentenced, plus attend to  
6 some needed medical issue. That's it.

7 THE COURT: Thank you.

8 Counsel, is there any reason that sentence should not  
9 be imposed at this time?

10 MR. NAFTALIS: No, your Honor.

11 MR. WEINBERG: No, your Honor.

12 THE COURT: In imposing sentence, I am required to  
13 consider the factors set forth in Title 18, United States Code,  
14 Section 3553(a). These include, first, the nature and  
15 circumstances of the offense and the history and  
16 characteristics of the defendant; second, the need for the  
17 sentence imposed to advance the purposes of sentencing, namely  
18 to reflect the seriousness of the offense, to promote respect  
19 for the law, and to provide just punishment for the offense, to  
20 afford adequate deterrence to criminal conduct, to protect the  
21 public from further crimes of the defendant, and to provide the  
22 defendant with needed education or vocational training, medical  
23 care or correctional treatment in the most effective manner;  
24 third, the kinds of sentences available; fourth, the guidelines  
25 range, which I have found to be 33 to 41 months' imprisonment;

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1 fifth, any pertinent policy statement; sixth, the need to avoid  
2 unwarranted sentencing disparities among defendants with  
3 similar records who have been found guilty of similar conduct;  
4 and seventh, the need to provide restitution to any victims of  
5 the offense.

6 Ultimately, I am required to impose a sentence that is  
7 sufficient, but no greater than necessary, to comply with the  
8 purposes of sentencing that I mentioned a moment ago.

9 Needless to say, I have given a lot of thought and  
10 attention to the appropriate sentence to impose in this case as  
11 I did in Mr. Golubchik's case yesterday, as I have for every  
12 defendant I have sentenced thus far in this case.

13 I will confess that I found Mr. Weinberg's arguments  
14 with respect to a departure or variance more effective than the  
15 arguments that were made to me yesterday. I will concede that.  
16 But nevertheless, I do think, as I did yesterday and as I  
17 articulated yesterday, that an upward departure and in the  
18 alternative, an upward variance is appropriate here.

19 The bottom line is that the defendant pleaded guilty  
20 to racketeering and money laundering and whether he was the  
21 central figure in that money laundering or not, his involvement  
22 in it is not disputed and is not minimal. The scale, nature  
23 and scope of that conduct is just not something, given the way  
24 the guidelines work, that I think is taken into consideration  
25 in the guidelines range, which is to say, for the reasons that

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1 I stated yesterday, that there are some anomalies here and  
2 whether that is a problem with the gambling provision, 2E3.1,  
3 or the money laundering provision, 2S1.1, by delinking  
4 completely the amount of money involved from the calculation of  
5 the guidelines, I think the commission failed to distinguish  
6 among different gradations or different enterprises or money  
7 laundering enterprises of different scales.

8 I think the anomalies are highlighted or exemplified  
9 in the calculation of Mr. Azen's guidelines which were higher  
10 than the calculation of Mr. Trinchler's and Mr. Golubchik's,  
11 even though the amount of money he was involved in laundering  
12 was substantially less, namely 200- to \$400,000, versus the 50-  
13 to \$100 million range that is at issue here.

14 Again, the bottom line is that when push comes to  
15 shove, I don't think that the guidelines adequately take into  
16 consideration the scale of these sorts of operations; and  
17 again, whether that is a problem with the gambling provision,  
18 the money laundering provision, the racketeering provision or  
19 the combination thereof, I do think that this case presents  
20 aggravating circumstances of a kind, or to a degree, that are  
21 not adequately taken into consideration by the sentencing  
22 commission.

23 To put it differently, this conduct in this case  
24 distinguishing Mr. Trinchler from the heartland of cases,  
25 including many of the other defendants that I have seen in this

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1 case.

2 When push comes to shove, I cannot bring myself to  
3 impose a different sentence on Mr. Trinchler than I imposed on  
4 Mr. Golubchik. From everything I have heard, and I hear that  
5 he may have played a different role and been a less  
6 sophisticated partner on the money laundering piece of this, it  
7 just does not seem to me that there is a meaningful distinction  
8 between the two, given the nature of the criminal conduct here  
9 and its scope, scale, sophistication and the like.

10 Any claim that Mr. Trinchler thought that what he was  
11 doing might have been legal, that he was only engaging in bets  
12 outside of the United States and the like is belied by the  
13 nature and extent of the money laundering here, which, again,  
14 whether he was in charge of it or not, he certainly was heavily  
15 involved in it; and whether or not there is any evidence that  
16 Mr. Trinchler himself was involved in or knew of any specific  
17 threats, the specter of violence was, I believe, present in  
18 this case as the two calls referenced in the government's  
19 submission and the mere fact that Mr. Tokhtakhounov and his  
20 status as a vor and his involvement in this case make clear.

21 Again, when push comes to shove, I just don't see any  
22 meaningful distinction to be drawn between Mr. Golubchik who I  
23 sentenced yesterday and Mr. Trinchler who sits before me today.

24 Having said that, I will now state the sentence that I  
25 intend to impose. Mr. Trinchler, would you please rise.

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1           It is the judgment of this Court, Mr. Trinchler, that  
2           you are remanded to the custody of the Bureau of Prisons for a  
3           period of 60 months, that is five years, to be followed by a  
4           period of three years of supervised release.

5           During your term of supervised release, you will be  
6           subject to the following mandatory conditions: You shall not  
7           commit another federal, state or local crime. You shall not  
8           illegally possess a controlled substance. You shall not  
9           possess a firearm or destructive device. You shall refrain  
10          from any unlawful use of a controlled substance and submit to  
11          one drug test within 15 days of your release on supervised  
12          release and at least two periodic drug tests thereafter as  
13          determined by probation. You shall cooperate in the collection  
14          of DNA as directed by probation.

15          In addition, the standard conditions of supervised  
16          release shall apply, and you must also meet the following  
17          special conditions: First, you shall submit your person,  
18          residence, place of business, vehicle or any other premises  
19          under your control to a search on the basis that the probation  
20          officer has reasonable belief that contraband or evidence of a  
21          violation of the conditions of release may be found.

22          The search must be conducted at a reasonable time and  
23          in a reasonable manner. Failure to submit to such a search may  
24          be grounds for revocation. You shall inform any other  
25          residents that the premises may be subject to search pursuant

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1 to this condition.

2 You shall participate in an alcohol treatment program  
3 approved by the United States Probation Department, which  
4 program may include testing to determine whether you have  
5 reverted to the use of alcohol.

6 I authorize the release of available alcohol treatment  
7 evaluations and reports to the substance abuse treatment  
8 provider as approved by the probation officer. You shall be  
9 required to contribute to the costs of services rendered; that  
10 is, to make a copayment in an amount determined by the  
11 probation officer based on your ability to pay or the  
12 availability of third-party payment.

13 You shall provide the probation officer with access to  
14 any requested financial information if you have not satisfied  
15 your fine, forfeiture obligations or special assessment, which  
16 I will mention in a moment. You shall not incur new credit  
17 charges or open additional lines of credit without the approval  
18 of the probation officer unless you have satisfied your  
19 financial obligations.

20 You are to report to the nearest probation office  
21 within 72 hours of your release from custody and you shall be  
22 supervised in the district of your residence. I also order you  
23 to pay a fine in the amount of \$75,000 which shall be payable  
24 within 30 days of the entry of judgment. I'm also imposing the  
25 mandatory special assessment of \$100, which shall be due and



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1 payable immediately.

2 I also find that pursuant to the terms of my order  
3 entered November 14, 2013, you are to forfeit to the United  
4 States the property specified in that order which represents  
5 the proceeds that you obtained directly or indirectly as a  
6 result of or used to facilitate your criminal activity. That  
7 obligation shall be joint and several with those of your  
8 codefendants.

9 Again, the record should reflect that I would have  
10 imposed the same sentence whether a departure applied under  
11 5K2.0 based on my authority and discretion under Section  
12 3553(a).

13 Does either counsel know of any legal reason, other  
14 than those already argued, why this sentence should not be  
15 imposed as stated?

16 Mr. Weinberg.

17 MR. WEINBERG: No, your Honor.

18 THE COURT: Mr. Naftalis.

19 MR. NAFTALIS: No, your Honor.

20 THE COURT: The sentence as stated is imposed.

21 I find that sentence is sufficient, but no greater  
22 than necessary, to satisfy the sentencing purposes set forth in  
23 Section 3553(a)(2), including the need to promote respect for  
24 the law, to provide just punishment for the offense, to afford  
25 adequate deterrence to Mr. Trinchler and to others, and to

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1 protect the public from further crimes of the defendant.

2 I should note that I neglected to include in my  
3 articulation of why I think a similar sentence is warranted to  
4 the extent that Mr. Trinchler is distinguishable from  
5 Mr. Golubchik, I do think and agree with the government that  
6 the involvement of his children in similar conduct is a  
7 relevant and aggravating factor to be considered here. That is  
8 not to say that I accept the argument or view him as having  
9 groomed them to take over his actual operation, but it is not a  
10 coincidence, I imagine, that his two children are charged in  
11 this case with having engaged in very similar conduct to which  
12 Mr. Trinchler himself has pleaded guilty. I think that is a  
13 relevant factor in crafting and imposing a sentence.

14 Mr. Weinberg, do you have any requests with respect to  
15 designation or the like?

16 MR. WEINBERG: First, I want to make sure I have  
17 protected the record in terms of the arguments that I made to  
18 your Honor ranging from the legal arguments, which are fairness  
19 and consistency and the kind of due process, *ex post facto*  
20 considerations that are not strictly applicable because we are  
21 dealing with guidelines not law; and the argument that this is  
22 not outside the heartland; that the government has failed to  
23 give your Honor a sufficient basis to show this is an  
24 exceptional set of aggravating circumstances; and that the  
25 guideline commission has considered and has rejected the volume

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1 or the magnitude as being an appropriate factor for sentencing,  
2 as well as my objections to role.

3 In terms of requests, first, I would request, as  
4 Mr. Golubchik did, the recommendation of an RDAP program.  
5 That's supported by paragraph 68 of the presentence report that  
6 shows Mr. Trinchler has had difficulties with alcohol and that  
7 he would benefit from the Bureau of Prisons' RDAP program.  
8 That would be my first request.

9 My second request would be for the Court to make a  
10 finding, because this deeply influences his eligibility for  
11 both camps and programs, and one of the things I'd like him to  
12 do is to learn English and develop skills and not just be  
13 warehoused during the next years.

14 I ask you to make a finding that whatever else the  
15 R.I.C.O. is charged with and codefendants were charged with,  
16 there is no evidence that he personally engaged in offense  
17 conduct that involved the use of force, threats, violence. I  
18 don't think the record supports that he used violence, that he  
19 made threats. And it will be of enormous importance to him  
20 given the allegations about others for the Bureau of Prisons to  
21 know that factually the Court did not find that he was a  
22 violent person who engaged in force or threats of violence.

23 Third, I would ask for a recommendation to a northeast  
24 camp with an RDAP Program.

25 Fourth, I would ask your Honor not to remand him. I

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1 think there is a principled distinction which is that he walked  
2 into court today having full awareness that it was highly,  
3 highly likely that despite whatever eloquent arguments I can  
4 make to your Honor that you were going to probably impose the  
5 same sentence because of the importance of disparity and the  
6 importance of proportionality.

7 With Mr. Golubchik, we knew the government's  
8 recommendation. We knew the government would recommend remand,  
9 but there's no reason to remand him, Judge. He's not a flight  
10 risk. You have a \$10 million bond cosigned by everybody out  
11 there, his family, his friends. He's not a flight risk.

12 He's demonstrated for two years -- there's not a shred  
13 of evidence they have the right to monitor his phones that he's  
14 been engaged in any wrongdoing. There's no danger. He's the  
15 same man today that he was two days ago, except if I can  
16 respectfully contend he has proven that he is going to meet  
17 whatever obligations he has to the Court.

18 That was something that Mr. Golubchik couldn't prove  
19 because he walked in thinking he was getting a guidelines  
20 sentence and your Honor made a decision that disappointed him,  
21 but Mr. Trinchler is here. He'll meet any conditions your Honor  
22 sets.

23 He's got, in addition, several outstanding medical  
24 issues. He's got a dental issue. Last night pretrial services  
25 allowed him to go to Queens and deal with his dental problems

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1 and, of course, he came back as he promised. The dentist  
2 started to fix loose teeth but needs time to finish the work.  
3 A letter was faxed, I hope not inappropriately, at probably  
4 10:30 this morning to your Honor's chambers dealing with the  
5 outstanding dental issues.

6 He's got an acute abdomen pain where the doctor is  
7 saying he is on medication and undergoing diagnosis. They  
8 still have not found the exact cause of it. It's really  
9 important when people go to jail for five years they have their  
10 dental and medical problems under control.

11 Lastly, he wants to be here, even if not in court,  
12 then at home when his two sons are being sentenced. And he  
13 feels a sense of deep responsibility for whatever part of their  
14 problems he caused. He'd like to be there for them. He's a  
15 good father. He'd like to be there and have some final time  
16 with the 12-year-old that's going to miss him deeply for three  
17 or four years while he's in the custody of the Bureau of  
18 Prisons.

19 He's not blaming anybody, but there's no need to  
20 remand him, Judge, and there is a principled basis to allow him  
21 60 days out.

22 Thank you, sir.

23 THE COURT: Let me say a few things at the outset.  
24 One, you have made your record and to the extent that you have  
25 preserved issues for appeal, they are preserved.

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1           You made reference to *ex post facto*. I confess I  
2       don't know what you're talking about on that score unless it is  
3       a loose term for the argument that this is not something that  
4       the defendant expected in pleading guilty pursuant to the  
5       agreement that he did.

6           I don't think there's any *ex post facto* argument  
7       within the technical meaning of that term in the Constitution.

8           MR. WEINBERG: I agree. I'm talking about the kind of  
9       values that they protect a citizen who believes at the time of  
10      an offense, that there is a law that sets a certain punishment,  
11      that part of the reason I believe your Honor enhanced it is  
12      that your Honor, for principled reasons, has determined that  
13      the existing guidelines do not match a factor and falls  
14      somewhere in the void between these three factors. It's not  
15      just the aggravation of the facts, but it's also that the  
16      guidelines, in your Honor's judgment -- and I believe that if  
17      you went before other judges, they would have a different  
18      judgment about the adequacy of these guidelines that are in  
19      effect so long.

20           It's not that he's entitled by some legislative action  
21      after the fact to the full implications of *ex post facto*  
22      protection; it's more the arguments about predictability and  
23      consistency and that citizens should get what they expected or  
24      what the law suggests they should expect.

25           Yes, this is 3553. Yes, it's advisory. I don't make

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1 a complete unconditional *ex post facto* argument. I do say that  
2 some of the values implicated are relevant in terms of the  
3 enhancement of the guidelines here, your Honor.

4 THE COURT: Again, you have made your record. I'm not  
5 aware of any *ex post facto* restriction on a Court exercising  
6 its discretion to craft an appropriate sentence within the  
7 statutory maximum and consistent with the law, but, again, you  
8 have made your record.

9 I will recommend that the Bureau of Prisons consider  
10 Mr. Trinchler for the RDAP program, assuming that he is eligible  
11 based on his recent history of the use of alcohol.

12 With respect to the issue of threats, I'm certainly  
13 prepared to say that I have not seen any evidence tying  
14 Mr. Trinchler directly to any particular threats or the use of  
15 violence, but I think I made my record earlier that I think the  
16 racketeering enterprise as a whole is certainly linked to, at a  
17 minimum, the specter of violence, if only through the person in  
18 the position of Tokhtakhounov. To the extent that Mr. Trinchler  
19 allied himself and affiliated himself with Tokhtakhounov, then  
20 he is connected to it.

21 But again, I certainly have not seen any evidence that  
22 Mr. Trinchler himself has exercised any violence or used any  
23 threats of violence himself.

24 MR. WEINBERG: Thank you, sir.

25 THE COURT: I will recommend that he be designated to

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1 a facility in the northeast, as close as possible to New York,  
2 to facilitate the maintenance of ties to his family.

3 On the question of remand, Mr. Naftalis, do you wish  
4 to be heard on that question?

5 In particular, I think Mr. Weinberg makes a reasonably  
6 compelling point that Mr. Trinchler is distinguishable from  
7 Mr. Golubchik in the sense that he showed up today having a  
8 pretty good sense of what might be coming down for him.

9 Could you address that issue.

10 MR. NAFTALIS: Your Honor, we think remand is  
11 appropriate. I don't see him as any different from  
12 Mr. Golubchik. The fact that you may have a better sense as to  
13 what your sentence will be -- they both knew they were going to  
14 jail and they both showed up.

15 The fact that you have a better sense that it's  
16 longer, I understand the argument. I'm not going to say it.  
17 He's certainly less of a risk of flight, but I don't think it  
18 means he should not be remanded.

19 I don't think the medical issue -- honestly, he's been  
20 out for a year. Every defendant has medical issues before they  
21 go in. When they know they're going in, they should deal with  
22 them; and if not, the Bureau of Prisons is more than capable of  
23 dealing with what sounds like relatively minor issues.

24 I don't think showing up for court necessarily means  
25 you don't go in. That's what it comes down to. Mr. Golubchik



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1 showed up, too.

2 THE COURT: I have to say I think that is a close  
3 call. I do think that Mr. Weinberg's argument gives me pause.  
4 I think, upon reflection, I don't see any reason to delay  
5 remand, and I don't think that the medical reasons warrant  
6 delaying remand.

7 I will therefore order that the defendant be remanded  
8 to the custody of the United States Marshal.

9 MR. WEINBERG: Could I ask your Honor to reconsider  
10 that decision at least for a short period, a two-week period,  
11 where he would be able to resolve these dental issues and  
12 finish his medical treatment.

13 Going to jail and trusting BOP dentists is not a good  
14 thing. He's not a flight risk. We're not asking any longer  
15 for the 60 days that others have gotten.

16 THE COURT: Mr. Weinberg, I have made my ruling. The  
17 answer is no.

18 MR. WEINBERG: Can I make one last request: Let him  
19 surrender at 3:00 today. The act of surrendering rather than  
20 being locked up gives you all kinds of security level  
21 reductions.

22 THE COURT: Mr. Weinberg, I have made my ruling.

23 The marshal is directed to take the defendant into  
24 custody. I assume that the marshal will coordinate with  
25 pretrial to remove the ankle bracelet if that's an issue here,

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1 as well.

2 Is there a motion with respect to other counts?

3 MR. NAFTALIS: Yes. The government moves to dismiss  
4 all open counts.

5 THE COURT: All counts other than Count One with  
6 respect to Mr. Trinchler are dismissed.

7 Mr. Trinchler, to the extent you have not given up your  
8 right to appeal, your conviction and sentence through the plea  
9 of guilty and the agreement that you entered into with the  
10 government, you have the right to appeal.

11 If you cannot afford to pay the costs of an appeal,  
12 you may apply for leave to appeal *in forma pauperis*. Any  
13 notice of appeal must be filed within 14 days of entry of the  
14 judgment of conviction.

15 Is there anything further, Mr. Naftalis?

16 MR. NAFTALIS: No, your Honor. Thank you.

17 THE COURT: Mr. Weinberg.

18 MR. WEINBERG: No, your Honor.

19 THE COURT: We are adjourned. Thank you.

20 (Adjourned)  
21  
22  
23  
24  
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